

ERIK BABCOCK (Cal. 172517)
JAMES STEVENS
717 Washington St., 2d Floor
Oakland, CA 94607
(510) 452-8400 Tel
(510) 452-8405 Fax

Attorneys for Defendant
LUKE BRUGNARA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Nos. CR 14-00306 WHA

Plaintiff,

TRIAL MEMORANDUM

v.

LUKE BRUGNARA,

Date: December 10, 2014

Time: 8:00 a.m.

Defendant

Dept: WHA

Defendant Brugnara, by and through the undersigned, submits the following memorandum pursuant to the Court's order of December 4, 2014 (Dkt # 216).

I. WITNESS/EXHIBIT LISTS

Defense investigation and preparation is ongoing. At this point, consistent with the prosecution bearing the burden of proof, as well as Rule 16(b) of the Federal Rules of Criminal Procedure, defendant does not know whether it will put on a case in chief, and he does, which witnesses he will call or exhibits will be introduced. Defendant reserves the right to designate such witnesses and exhibits as may be necessary at an appropriate time.

///

1 **II. PROPOSED VOIR DIRE**

2 Defendant does not have any written voir dire for the court to use with the jury panel and
3 will be able to adequately inquire of the prospective jurors during counsel's allotted time to speak
4 with the jury panel.
5

6 **III. JURY INSTRUCTIONS**

7 **A. Standard Instructions**

8 The Ninth Circuit jury instructions which potentially apply to this case, depending on
9 how the evidence comes in, are as follows:

10 1.1 Duty of Jury

11 1.2 The Charge—Presumption of Innocence

12 1.3 What Is Evidence

13 1.4 What Is Not Evidence

14 1.5 Direct and Circumstantial Evidence

15 1.6 Ruling on Objections

16 1.7 Credibility of Witnesses

17 1.8 Conduct of the Jury

18 1.9 No Transcript Available to Jury

19 1.10 Taking Notes

20 1.11 Outline of Trial

21 1.12 Jury to Be Guided by Official English Translation/Interpretation

22 2.1 Cautionary Instruction—First Recess

23 2.2 Bench Conferences and Recesses

24 2.6 Deposition as Substantive Evidence

- 1 2.9 Foreign Language Testimony
- 2 2.11 Evidence for Limited Purpose
- 3 3.1 Duties of Jury to Find Facts and Follow Law
- 4 3.2 Charge Against Defendant Not Evidence—Presumption of Innocence—Burden of Proof
- 5 3.3 Defendant’s Decision Not to Testify
- 6 3.4 Defendant’s Decision to Testify
- 7 3.5 Reasonable Doubt—Defined
- 8 3.6 What Is Evidence
- 9 3.7 What Is Not Evidence
- 10 3.8 Direct and Circumstantial Evidence
- 11 3.9 Credibility of Witnesses
- 12 3.10 Activities Not Charged
- 13 3.16 Intent to Defraud—Defined
- 14 4.1 Statements by Defendant
- 15 4.5 Character of Victim
- 16 4.6 Impeachment, Prior Conviction of Defendant
- 17 4.8 Impeachment Evidence—Witness
- 18 4.14 Opinion Evidence, Expert Witness
- 19 8.121 Mail Fraud
- 20 8.124 Wire Fraud
- 21 8.137 False Declaration Before Court
- 22 7.1 Duty to Deliberate
- 23 7.2 Consideration of Evidence—Conduct of the Jury
- 24
- 25
- 26
- 27
- 28

1 7.3 Use of Notes

2 7.4 Jury Consideration of Punishment

3 7.5 Verdict Form

4 7.6 Communication With Court

5
6 **B. Special Instructions**

7 Defendant has reviewed the government's proposed instructions and objects to its two
8 proposed instructions entitled:

- 9 1. Gullibility, Naivete, or Wrongs of Victims Irrelevant
10 2. Value or Belief About Value of Property Irrelevant
11

12
13 Respectfully submitted,
14

15 DATED: December 5, 2014

/s/Erik Babcock

ERIK BABCOCK

Attorney for Defendant

LUKE BRUGNARA